

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA COPENHAVER,

Plaintiff,

v.

JEFFREY JAMES, et. al.,

Defendants.

CIVIL ACTION NO. 06-CV-11111

DISTRICT JUDGE PAUL V. GADOLA

MAGISTRATE JUDGE DONALD A. SCHEER

ORDER GRANTING PLAINTIFF'S MOTION TO FILE AMENDED COMPLAINT

Plaintiff, while incarcerated at the Florence Crane Correctional Facility,¹ in Coldwater, Michigan was allowed to proceed *in forma pauperis* and filed the instant Complaint, pursuant to 42 U.S.C. § 1983, on March 15, 2006, against twelve prison officials employed by the Michigan Department of Corrections (MDOC), alleging that they had violated his federal constitutional rights as a result of various actions taken by them in connection with his incarceration. Plaintiff sought declaratory/injunctive relief as well as compensatory and punitive damages.

In a Report and Recommendation dated June 9, 2006, I recommended in that the Court dismiss the Complaint without prejudice for failure to exhaust administrative remedies. Plaintiff immediately filed a Motion for Leave to Amend the Complaint on July 6, 2006, asserting that he had, in fact, exhausted his administrative remedies. Plaintiff

¹Plaintiff is currently incarcerated at the Gus Harrison Correctional Facility in Adrian, Michigan.

attached to his proposed Amended Complaint copies of exhausted grievances he had filed with prison officials (Docket #28).

In an Order dated July 25, 2006, the Court adopted the Report and Recommendation and dismissed the Complaint for lack of exhaustion of prison administrative remedies (Docket #30). The Court also denied Plaintiff's Motion to Amend the Complaint because the Prison Litigation Reform Act (PLRA) prohibited amendments to complaints that were deficient due to a failure to exhaust (Docket #31).

The Court subsequently vacated its determination to dismiss the Complaint following the Supreme Court's decision in Jones v. Bock, 127 S.Ct. 910 (2007). The Supreme Court held that, while exhaustion is still a requirement to succeed on a claim, failure to exhaust administrative remedies is not a pleading requirement of the PLRA. Id. at 923, and that dismissal of the entire complaint is not appropriate when a prisoner fails to exhaust one of several claims within a complaint. Id. at 923-926. In conformity with that determination, this Court vacated its earlier order denying Plaintiff's Motion to Amend the Complaint (Docket #37).

This cause was referred back to the Magistrate Judge for a determination on all pretrial matters, and for a Report and Recommendation on any dispositive motions relating to the remaining issues only. Since the Defendants have not filed a responsive pleading to date, Plaintiff should be allowed to file his July 2006 Amended Complaint (Docket #28). The First Amended Complaint is hereby deemed filed.

Defendants will be allowed 30 days to file a responsive pleading. If the case survives summary disposition, the Court will facilitate a telephonic conference call for the purpose of allowing the parties to provide a Final Pretrial Order to the Court. Plaintiff's separate

motions for a Temporary Restraining Order (Docket #40) and Default Judgment (Docket #41), filed on June 8, 2007, will be held in abeyance until the Defendants have filed a responsive pleading.

SO ORDERED

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: June 22, 2007

CERTIFICATE OF SERVICE

I hereby certify on June 22, 2007 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on June 22, 2007. **Joshua Copenhaver.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217